No.10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32 (2) (b)]

Description of Case.

A.O. NO. 164 of 2003

National Insurance Company Limited

Versus

Rajendra Kumar and another.

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

(B.S. Verma, J.)

Initials of Judge

Date: 20-04-2006

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
A.O. No. 164 of 2003

National Insurance Company Limited through its
Divisional Manager, Divisional Office Canal Road,
Haldwani, District Nainital, Uttaranchal.

…Appellant

Versus

1. Rajendra Kumar son of late Sri Kundan Lal,
   Resident of village Garoganj, Tehsil Kashipur,
   District Udhamsingh Nagar.
2. Mr. Gurdeep Singh S/O Sri Pratap Singh,
   Resident of Adarsh Nagar, Moradabad, Distt. Moradabad
   U.P.

… Respondents

Sri D.S.Patni, Adv. learned counsel for the appellant.
Sri R.S.Latwal, Advocate, Learned Counsel for the respondent No.1.

Date April 20, 2006.

P.C : Hon. B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 ***(for short the Act)*** is directed against the judgment and award dated 18-4-2003, passed by the Motor Accident Claims Tribunal/ District Judge Nainital(***in short the Tribunal)*** in Motor Accident Claim Petition No. 205 of 1997, Rajendra Kumar Vs. Gurdeep Singh and another, whereby compensation of Rs. 90,000/- has been awarded in favour of the claimant along with interest @ 6% per annum from the date of claim petition till the date of payment against the Insurance Company-appellant.

Relevant facts are that claimant Rajendra Kumar filed claim petition before the learned Tribunal on account of death of his father Kundanlal due to the injuries suffered by him in a motor vehicle accident which occurred on 19-12-1996 involving Truck No. UMC-8265, which was being driven rashly and negligently by its driver. The compensation of Rs. 15 lacs was claimed.

The claim petition was contested by the owner of the truck who filed his written statement alleging that the truck was being driven by a duly licensed driver and the accident occurred due to the negligence on the part of the deceased. The compensation if any is payable by the Insurance Company.

The appellant-Insurance Company filed its written statement on the ground that that the driver of the offending truck was not having a valid driving licence and there was violation of policy conditions. The death of the deceased was natural.

The Tribunal framed necessary issues in the case and on the basis of the evidence led by the parties decided the issues in favour of the claimant and it has been held on the point of validity of driving licence that the Insurance Company has not led any evidence to show that the driver was not having a valid driving licence. The Tribunal has held that the driver was having a valid driving licence. Ultimately the claim petition was decreed as mentioned above.

It may be mentioned that the Insurance Company has not obtained permission of the learned Tribunal under Section 170 of the Act. Moreover, there is no such finding of the Tribunal that the claim petition has been filed in collusion between the claimant and the person against whom the claim has been made. In such circumstances, it is not open to the Insurance Company to challenge the award passed by the Tribunal on the point of negligence or contributory negligence and also on the quantum of compensation in view of the law laid down by the Apex Court in the case of ***"National Insurance Company Ltd. Vs. Nicolletta Rohtagi and others"[(2002) 7 S.C..C. 456].*** The appeal is not maintainable on this score. In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation***

as well as findings as regard negligence or contributory negligence of the offending vehicle".

I have heard submission of the learned counsel for the appellant-Insurance Company and perused the entire material on record.

The contention of the appellant is that the driver of the truck in question was not having a valid driving licence on the date of the accident. But this fact that the driver was not having a valid driving licence in itself is not sufficient to absolve the insurer from its liability to pay compensation unless it is proved by the insurance company that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time. In the instant case, the appellant-insurance company has not led any evidence before the Tribunal to establish that the insured was negligent or he failed to exercise reasonable care in that regard. It has not been shown as to whether it was within the knowledge of the owner of the truck that the truck driver was not having a valid driving licence at the relevant time. I am fortified in my view by the Apex Court judgment in the case of ***National Insurance Co. Ltd. V. Swaran Singh [(2004) 3 SCC 297].*** In para 110(iii), the Apex Court has observed as under:-

"Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time."

Again, in a subsequent case ***"Punam Devi and another Vs. Divisional Manager, New India Assurance Co. Ltd. and others" [(2004) 3 Supreme Court Cases, 386],*** the Apex Court has observed that ***"Motor Accident- Insurance company neither pleading nor leading evidence that the offending driver had no licence- Claims Tribunal awarding compensation- Held, quantum of compensation cannot be challenged and the only ground open to the Insurance Company is under S. 149(2), to show that the insured was negligent or that he failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicles- Since the Insurance Company failed to discharge this burden, High Court erred in allowing the appeal."***

So far as use of multiplier of 5 by the Tribunal is concerned, there appears to be no illegality. The deceased Kundal Lal was aged more than sixty years and the learned Tribunal has rightly applied multiplier of 5 in accordance with Second Schedule of Section 163-A of the Act. The submission is misconceived.

For the reasons and discussion aforesaid, the appeal lacks merit and is liable to be dismissed.

The appeal is dismissed. The impugned award dated 18-4-2003 is upheld. No order as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant.

(B.S.Verma, J.)

RCP